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Chapter 9

Political Rights and Liberties in the European Union: an Ideal Dating Back to the Enlightenment?

Hélène Palma*

Abstract

This article offers to focus on the historical, philosophical and cultural contexts which paved the way for the political and administrative entity that the European Union has become over the last few decades. Of course the European cultural cohesion finds its deepest roots in Europe's rich antique background, made up of Greek, Roman, Jewish and Christian legacies, each having contributed in the linguistic, political, philosophical and moral structures of this continent. Without necessarily endorsing Denis de Rougemont's view according to which Europe has in fact existed for the past twenty-eight centuries¹, one can positively assert that the European Union with its ideal of inalienable individual liberties undeniably corresponds to a specific representation of the human kind, which appeared in the 17th and 18th centuries, in Enlightenment Europe. This article will often refer to Jonathan Israel's theory, developed in his essay *Radical Enlightenment* and will try to show that the influence of this pioneering thought was so far-reaching that it was probably in the French revolutionaries' minds, notably when they wrote the *Déclaration des Droits de l'Homme et du Citoyen* in August 1789. This article will first deal with the primary importance of individual rights in the European Union, it will then explore the origins of such ideals, mainly in 17th-century Northern Europe, before addressing the transmission and development of those ideals to the rest of Europe in the 18th century.

Key words: individual rights and liberties, Spinoza, Locke, Enlightenment, French revolution, European Union.

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¹ Rougemont, Denis de, *Vingt-huit siècles d'Europe. La conscience européenne à travers les textes, d'Hésiode à nos jours*, Paris : Payot, 1961.



9.1. The central importance of the notion of inalienable individual rights and liberties for Europe

One of the cornerstones of the European project has always been, in a post-Second World War context, the preservation of peace, liberties and individual rights. Churchill probably expressed the best the necessity and emergency to initiate a new era after the shock of the Second World War and the incredible quantity of civilian casualties it caused:

I wish to speak to you today about the tragedy of Europe (...). Yet all the while, there is a remedy which, if it were generally and spontaneously adopted by the great majority of people in many lands, would as if by a miracle transform the whole scene, and would in a few years make all Europe, or the greater part of it, as free and as happy as Switzerland is today. What is that sovereign remedy? It is to recreate the European family, as much of it as we can, and to provide it with a structure under which it can dwell in peace, in safety and in freedom. (Winston Churchill, Speech at Zurich University, 19th September 1946).

With this objective of preserving peace and defending fundamental liberties in mind, European leaders rapidly settled institutions specializing in the definition and enforcement of human rights. The *European Convention on Human Rights*, formally known as the *Convention for the Protection of Human Rights and Fundamental Freedoms*, is of international scope, and was drafted as early as 1950 by the Council of Europe. The Convention entered into force in 1953. This convention specifies the following principles:

- Article 1 – Obligation to respect human rights
- Article 2 – Right to life
- Article 3 – Prohibition of torture
- Article 4 – Prohibition of slavery and forced labour
- Article 5 – Right to liberty and security

The *European Convention on Human Rights* later established the *European Court of Human Rights* (ECHR): anyone considering that his or her rights have not been fully respected by his or her own country can lodge an application with the *European Court of Human Rights*.

More recently, in 1999, the *European Convention* drafted the *Charter of Fundamental Rights of the European Union* which was solemnly proclaimed in December 2000 by the European Parliament and the European Commission. It



came into force in December 2009 with the *Treaty of Lisbon*. This Charter, which contains 54 articles, applies to the European Union and its member states. It prescribes the following principles: all European citizens have the right to life, liberty, personal integrity, liberty of thought, religion, expression, assembly and education. They are also all entitled to protection from torture, slavery and death penalty. They have to be treated equally whatever their age, gender, sexual orientation, cultural, religious or linguistic backgrounds. Their rights as workers, as citizens (right to vote) and as litigants before justice (right to a fair trial, presumption of innocence) are also carefully defined in the Charter.

But where do all those principles originate? One may be tempted to answer that the 1948 *Declaration of Human Rights* adopted by the United Nations may be the source of the European commitment to the defence of fundamental liberties. But the United Nations' 1948 Declaration was itself inspired by the French *Déclaration des Droits de l'Homme et du Citoyen* in 1789. Where, then, did the French find inspiration for the formulation of their ideas?

9.2. The invention of natural individual rights and liberties

According to Jonathan Israel's theory, the Enlightenment finds its deepest origins in Holland and more specifically in the radical thought developed by Baruch Spinoza.

Indeed, as early as the mid17th century, in a philosophical and political context which often promoted tyranny and submission, as did for instance Thomas Hobbes in his essay *Leviathan* published in 1651, a Dutch thinker named Baruch Spinoza, came up with a pioneering concept – that of individual liberties, which he defined as being man's natural and inalienable condition:

I always preserve the natural right in its entirety and hold that the sovereign power in a state has a right over a subject only in proportion to the excess of its power over that subject ; this is always the case in the state of nature, (Spinoza, *Letters*, Indianapolis, IN: Hackett, 1995, 258).

In Spinoza's view, human beings' initial condition is to be essentially free and equal – this condition remaining true whatever happens: '(humans) remain equal, as they used to be in the state of Nature' (*Tractatus Theologico-Politicus* (1670), Leiden: Brill, 1989, 243).

Considering that liberty and equality are rooted in natural right, Spinoza interpreted human history and society in very pragmatic terms. In his view, indeed, if human beings have formed social groups since the dawn of time, it is only for



practical reasons, that is to say in order to be stronger and to protect each other: 'to achieve a secure and good life, men had to unite in one body' (*Tractatus Theologico-Politicus* (1670), Leiden: Brill, 1989, 240).

According to Spinoza, this initial, essential, inalienable liberty of each and every human being gives citizens the faculty and even the duty to resist tyranny and to fight in favour of a political regime 'in which absolutely everyone (...) is bound only by the laws of his patria and is otherwise independent, and (...) leads a decent life, has the right to vote in the supreme council and take up offices of state' (*Tractatus Theologico-Politicus* (1670), Leiden: Brill, 1989, 443). In other terms, as early as the mid-17th century, Spinoza promoted a democratic system in which everyone's liberties would be protected.

But individual liberties, according to Spinoza, also include a liberty which he named *libertas philosophandi* and which can be briefly defined as the freedom of philosophising and saying what one thinks: 'in a Free State, every man may think as he pleases and say what he thinks' (*Tractatus Theologico-Politicus* (1670), Leiden: Brill, 1989, 222). This concept of *libertas philosophandi* includes religious freedom, in the sense that everyone can believe in what they wish so long as it does not restrain other people's rights. For Spinoza indeed, the degree of religious toleration and individual liberties is higher when 'the right of the sovereign, both in the religious and secular spheres, (is) restricted to men's actions, with everyone being allowed to think what he wishes and say what he thinks' (*Tractatus Theologico-Politicus* (1670), Leiden: Brill, 1989, 299).

Now Spinoza's essays were widely read and studied. Deeply controversial, they were often criticized and rejected. This was the case of Henry More² or William Carroll³ to name but a few of the philosophers who felt urgent to fight Spinoza's revolutionary views, most of the time equated with pure atheism.

But some thinkers agreed with Spinoza's major philosophical concepts which deeply impressed an English thinker named John Locke.

9.3. Locke's conception of natural individual rights and liberties

Locke's connections with Spinoza's thought have been abundantly documented. Already in the 17th century, thinkers such as William Carroll immediately noticed the striking similarities between the two philosophers' views and the fact that they share the same 'principles of universal toleration in matters of religion'⁴. More recently, contemporary critics have collected evidence of this philosophical kinship

² See *Henry More's Refutation of Spinoza* by Alexander Jacob, Hildesheim: Georg Olms, 1991.

³ See *A letter to the Reverend Dr Benjamin Pratt*, London, 1707.

⁴ *A letter to the Reverend Dr Benjamin Pratt*, London, 1707, 16.



between the two thinkers. Wim Klever, an emeritus professor of philosophy at Erasmus University in Rotterdam (Netherlands) published an article entitled 'Locke's Disguised Spinozism'⁵ which I used to write the coming paragraphs. Wim Klever asserts from the beginning of his article that 'Locke was not only much influenced by Spinoza's works, but that he also adopted and processed all the main items of his physics, epistemology, ethics and political theory' (61).

And indeed, from the point of view of political theory more interestingly, the two philosophers' views are strikingly similar. For instance, Spinoza asserted in his *Tractatus Politicus or Political Treatise* that human beings' natural rights remain absolutely intact and inalienable even when they live in a group and in spite of the social contract: 'If we weigh the matter aright, the natural right of every man does not cease in the civil state. For man, alike in the natural and in the civil state, acts according to the laws of his own nature, and consults his own interest' (chapter 3, § 3, 302)⁶. Locke declared in his *Two Treatises of Civil Government* (1690) that 'The obligations of the law of Nature cease not in Society' (§ 135, 205⁷).

In like manner, the two philosophers considered that, as individual liberties prevail in every circumstance, human beings have an inalienable right to rebellion against tyranny and injustice. Spinoza expressed himself in the following terms: 'a king can be deprived of the power of ruling, (...) by the law of war, in other words the subjects may resist his violence only with violence' (*Tractatus Politicus*, chapter 7 § 30, 343⁸). Locke declared a few years after Spinoza, and most probably after extensively reading his thought-provoking essays: 'when the people are made miserable and find themselves exposed to the ill usage of arbitrary power... the people generally ill-treated, and contrary to right, will be ready upon any occasion to ease themselves of a burden that sits heavy upon them. They will wish and seek for the opportunity, which in the change, weakness and accidents of human affairs, seldom delays long to offer itself. He must have lived but a little while in the world, who has not seen examples of this in his time. [...] Such revolutions happen not upon every little mismanagement in public affairs (231⁹)'.

Now Locke's *Treatises of Government*, which enabled Spinoza's revolutionary views to travel from Northern Europe to the rest of the continent, represent a cornerstone of Western political philosophy. Locke's theory of government is indeed based on the notion of liberty, on that of the sovereignty of the people, starting

⁵ 'Locke's Disguised Spinozism' in Brazilian journal *Revista Conatus, filosofia de Spinoza*, Vol. 6, n° 11 (61-82) and 12 (53-74), Fortaleza: Ed. da Universidade Estadual do Ceará, Jul. And Dec. 2012 (ISSN 1981-7509).

⁶ De Spinoza, Benedict, *A Theologico-Political Treatise and a Political Treatise* (1677), Mineola: Dover Publications, 2004.

⁷ John Locke, *The Works of John Locke in Three Volumes*, volume II, London: Browne, 1751.

⁸ De Spinoza, Benedict, *A Theologico-Political Treatise and a Political Treatise* (1677), Mineola: Dover Publications, 2004.

⁹ John Locke, *The Works of John Locke in Three Volumes*, London: Browne, 1751, volume II.



from the premise of a community of free, equal individuals, all possessed of natural rights. Locke considered that human beings then relinquish some of their natural rights in order to enter into a social contract only because it represents, in his opinion, the best protection possible. These notions of natural liberty and 'social contract' had a huge impact on the Enlightenment philosophy. In a very characteristic way, we can even assert that it moulded Jean-Jacques Rousseau's realistic approach to society, which he saw as a compromise securing human beings' civil liberties, as shows this very interesting quotation from his essay *Du Contrat Social (The Social Contract)* published in 1762: 'What man gains with the social contract is civil liberty and property'¹⁰.

Clearly enough, then Locke's political views were transferred to the rest of Europe and most probably contributed to the founding of the political principles which still characterize European democracies and the European Union nowadays.

9.4. How Locke's views travelled throughout Europe and how the concept of natural individual rights and liberties spread to the whole continent

Locke became a fashionable philosopher in Europe in the 18th century, in France more particularly where his political theory was very much admired by such *philosophes* as Montesquieu and Voltaire. More generally, Locke's political views were popularized by this cultural and intellectual movement which swept the whole European continent and which was known as Anglomania. English fashion and styles, English poetry but mostly the English (or rather British) constitutional monarchy were viewed and presented as a perfection.

Montesquieu's theory of the separation of the legislative, executive and judiciary powers, which he developed in his *Spirit of Laws* (1748) was heavily influenced by Locke in his *Two Treatises of Government* (1690). In chapter 12 of the *Second Treatise of Civil Government*, John Locke clearly describes the separation of powers in very precise terms as shows the very title of the section, *The legislative, executive and federative powers of the government*:

in well – ordered commonwealths, where the good of the whole is so considered, as it ought, the legislative power is put into the hands of divers persons, who duly assembled, have by themselves, or jointly with others, a power to make laws, which when they have done, being separated again, they are

¹⁰ 'Ce que (l'homme) gagne (dans le contrat social) c'est la liberté civile et la propriété' (Rousseau, *Du Contrat social ou principes du droit politique*, Amsterdam : Rey, 1762, 38).



themselves subject to the laws they have made; which is a new and near tie upon them, to take care, that they make them for the public good (Chapter 12, §143, 208¹¹).

As for Montesquieu, the 6th chapter of the 11th book in *De l'esprit des Lois* was obviously inspired by Locke's view of the separation of powers and by the example set by the British constitution as shows its very title, *Of the Constitution of England* (*De la Constitution de l'Angleterre*):

In every government there are three sorts of power: the legislative; the executive in respect to things dependent on the law of nations; and the executive, in regard to things that depend on the civil laws (Book 11, chapter 6, 130¹²).

Voltaire dedicated one of his *Philosophical Letters*, also known as *English Letters*, published in 1734, to John Locke, whom he considered as the most influential philosopher of modern times:

Mr. Locke has displayed the human soul in the same manner as an excellent anatomist explains the springs of the human body. He everywhere takes the light of physics for his guide. He sometimes presumes to speak affirmatively, but then he presumes also to doubt. Instead of concluding at once what we know not, he examines gradually what we would know. He takes an infant at the instant of his birth; he traces, step by step, the progress of his understanding; examines what things he has in common with beasts, and what he possesses above them. Above all, he consults himself; the being conscious that he himself thinks (Letter 13, 120).

International exchanges also contributed to the spreading of the notion of natural individual rights and liberties such as they were formulated by John Locke¹³. In Paris, during the French Revolution, John Oswald, who was about to launch *The Universal Patriot*, an English newspaper in Paris, later became a member of the *British Club* also known as *The Society of the Friends of the Rights of Man*. Oswald declared that:

¹¹ John Locke, *The Works of John Locke in Three Volumes*, London: Browne, 1751, volume II.

¹² 'Il y a dans chaque État trois sortes de pouvoirs : la puissance législative, la puissance exécutrice des choses qui dépendent du droit des gens, et la puissance exécutrice de celles qui dépendent du droit civil' livre 11, chapitre 6, 130, Montesquieu, *Œuvres Complètes*, Paris : Hachette, 1859.

¹³ See 'The British Origins of the French Jacobins: Radical Sociability and the Development of Political Club Networks, 1787-1793', Micah Alpaugh, in *European History Quarterly*, Vol. 44 n° 4, 593-619, London: Sage Publications, 2014.

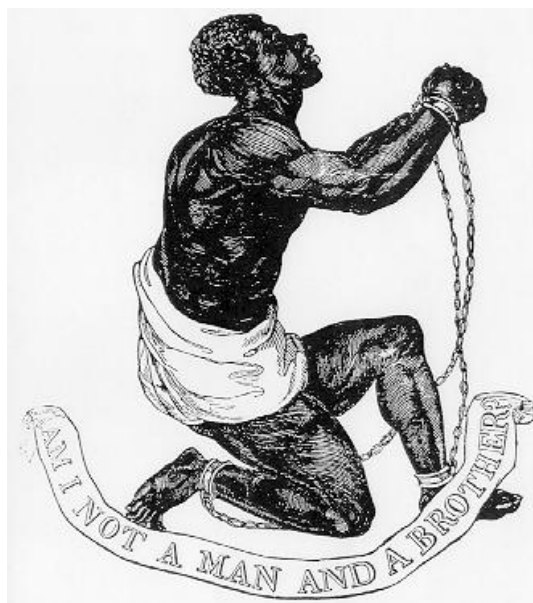


by the study of English authors, by conversing with Englishmen, by discoursing on English affairs have the French imbibed those principles of Liberty. (299¹⁴).

The *British Club* was hosted at White's Hotel, named after its owner, Christopher White. Among the members of the *British Club* was of course Thomas Paine who collaborated with Condorcet on the editorship of newspaper *Le Républicain*, a strongly revolutionary newspaper in which the two *philosophes*, well-known for their commitment to the ideals of natural liberty and individual rights, expressed themselves.

Some French revolutionaries also travelled to the British Isles and returned to France with new ideals and a new conception of liberty. Such was the case of Jacques-Pierre Brissot who travelled to London and was in regular contact with British abolitionists like Thomas Clarkson who was among the co-founders, in 1787, of the *Society for Effecting the Abolition of the Slave Trade*¹⁵. Back in France in 1788,

Figure 9.1. Wedgwood's anti-slavery medallion for the Committee for the Abolition of the Slave Trade originally designed in 1787



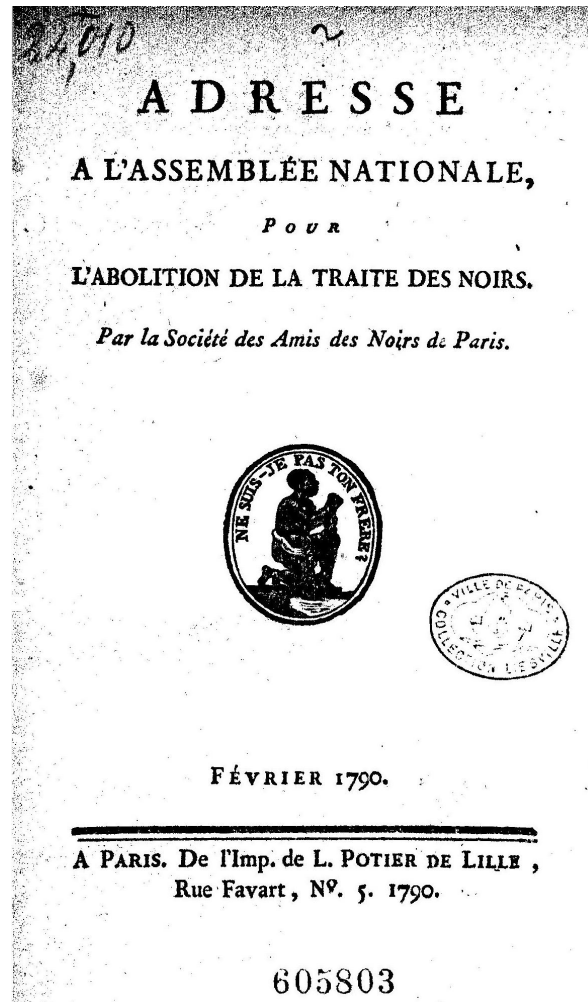
Public domain: https://commons.wikimedia.org/wiki/File:Official_medallion_of_the_British_Anti-Slavery_Society_%281795%29.jpg

¹⁴ Erdman, David, *Commerce des Lumières: John Oswald and the British in Paris, 1790-1799*, Columbia: Missouri University Press, 1986.

¹⁵ 'The British Origins of the French Jacobins: Radical Sociability and the Development of Political Club Networks, 1787-1793', Micah Alpaugh, in *European History Quarterly*, vol 44 n° 4, 593-619, London : Sage Publications, 2014, pages 597 and ff.



Figure 9.2. The symbol chosen by the *Société des Amis des Noirs* founded in 1788



Public domain: https://commons.wikimedia.org/wiki/File:Soci%C3%A9t%C3%A9_des_amis_des_noirs_f%C3%A9vrier_1790.JPG

Jacques-Pierre Brissot co-founded with Etienne Clavière an abolitionist group known as *La Société des Amis des Noirs*. In 1789, when the French Revolution broke out, the *Société des Amis des Noirs* could boast 141 members, among whom Mirabeau, Condorcet, La Fayette. Of course this association just like its British counterpart referred to the lockian concept of natural liberty and individual rights to demand Black people's emancipation. Very interestingly, the French association used the same symbol as its English counterpart — the very striking representation of a kneeling Black man designed by Josiah Wedgwood, which proves how deeply connected the two movements were.





9.5. The French *Déclaration des droits de l'homme et du citoyen*: first public formulation of the notion of human rights, later endorsed by international organizations such as the European Union.

On 26 August 1789, the French Constituent Assembly adopted a text entitled *Déclaration des Droits de l'Homme et du Citoyen* (Declaration of the Rights of Man and the Citizen). The whole document is full of implicit references to the liberal philosophers previously quoted:

The representatives of the French people, organized as a National Assembly, believing that the ignorance, neglect, or contempt of **the rights of man** are the sole cause of public calamities and of the corruption of governments, (*My emphasis*).

The choice of the phrase 'rights of man', which Thomas Paine employed in his 1791 essay in defence of the French Revolution after Burke's violent attack, calls to mind the terminology already used by Spinoza ('natural right') and Locke ('law of nature'). This impression is confirmed when one reads the rest of the declaration:

have determined to set forth in a solemn declaration the **natural, inalienable, and sacred rights of man**, in order that this declaration, being constantly before all the members of the Social body, shall remind them continually of their rights and duties. (*My emphasis*).

The order in which man's 'imprescriptible rights' (article 2) are listed is also interesting to observe. Indeed, the French revolutionaries stated that:

The aim of all political association is the preservation of the natural and imprescriptible rights of man. These rights are **liberty, property**, security, and resistance to oppression (article 2). (*My emphasis*).

Clearly enough, the French revolutionaries insisted that first comes man's right to liberty, and second his right to property, which is reminiscent of Locke's own consideration of natural rights in the *Second Treatise of Civil Government*:

To understand political Power right, and derive it from its Original, we must consider what State all Men are naturally in and that is a State of Perfect **Freedom** to order their Actions and dispose of their **Possessions** (Chapter 2, 160¹⁶). (*My emphasis*).

¹⁶ John Locke, *The Works of John Locke in Three Volumes*, London: Browne, 1751, volume II.





Jonathan Israel noted in his 2001 thought-provoking essay, *Radical Enlightenment*, that

‘In the depths of the French Revolution the Jacobin Clubs all over France (...) were (...) invoking a radical tradition which reached back to the late seventeenth century’ (274¹⁷). In fact, his remark applies to the whole liberal tradition which goes from the mid-17th century to modern European democracies and more specifically, in the present case, to the European Union’s political ideals.

The notion of human inalienable rights, then, which strongly delineates the political identity of the European Union was therefore invented on the European continent in the early modern age: this fascinating and generous definition of human liberty has since then pervaded every aspect of political life and caused major revolutionary events from the 1688 Glorious Revolution to the French Revolutionary years and the 1789 *Declaration of the Rights of Man and the Citizen*. This ideal of human rights and liberties was at the basis of the political European Union as early as the 1950s because it is in fact woven into the very fabric of the European philosophical history. It can even be considered that the proto-feminist debate launched by such women as Catharine Macaulay¹⁸, Mary Wollstonecraft and Olympe de Gouges in the 18th century was also influenced by the notions of natural liberty and natural rights. It is not sure whether De Gouges and Wollstonecraft ever physically met, but both female writers, inspired by the notion of human natural liberty, came up with essays defending women’s basic rights: in 1791, Olympe de Gouges published her *Declaration of the Rights of Woman and the Citizen* (*Déclaration des Droits de la Femme et de la Citoyenne*) and in 1792, Mary Wollstonecraft published *A Vindication of the Rights of Woman*.

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